Over the Borderline*—A Review of Margaret Price’s *Mad at School: Rhetorics of Mental Disability and Academic Life*

By Gregory M. Duhl**

This essay is about “madness” in higher education. In *Mad at School: Rhetorics of Mental Disability in Academic Life*, Professor Price analyzes the rhetoric and discourse surrounding mental disabilities in academia. In this essay, I place Price’s work in a legal context, suggesting why the Americans with Disabilities Act fails those with mental illness and why reform is needed to protect them. My own narrative as a law professor with Borderline Personality Disorder frames my critique. Narratives of mental illness are important because they help connect those who are often stigmatized and isolated due to mental illness and provide a framework for them to overcome barriers limiting their equal participation in academic life.

I. INTRODUCTION

In *Mad at School: Rhetorics of Mental Disability and Academic Life*,¹ Margaret Price writes about academics (i.e., students, staff, faculty, and administrators) who are “mad”² in

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* This is from the title of Madonna’s famous song, written in February 1984.

** Associate Professor of Law, William Mitchell College of Law. I thank Jim Hilbert and Jaclyn Millner who often go to great lengths to prevent me from going “mad” or “losing my mind.” I also thank my friends and family who have helped me “behind the scenes”: you know who you are.

¹ MARGARET PRICE, MAD AT SCHOOL: RHETORICS OF DISABILITY AND ACADEMIC LIFE (2011).

² See id. at 10 (“Mad” is a term generally used in non-U.S. contexts, and has a long history of positive and person-centered discourses. MindFreedom International, a coalition of grassroots organizations, traces the beginning of the ‘Mad Movement’ to the early 1970s, and reports on ‘Mad Pride’ events that continue to take place in countries including Australia, Ghana, Canada,
higher education. Despite often burying her readers in rhetorical theory, Price offers a refreshing discussion of mental disability in academic life, inviting a dialogue that has long been missing in legal education. In focusing on the rhetoric and discourse surrounding mental illness, Price departs from traditional legal and medical analyses of the rights of the mentally ill and “cures” for mental illness. In doing so, she offers a blueprint for increased understanding and acceptance of and participation by those who are “mad” in legal education.

I am “mad.” As a law professor, students, staff, and faculty colleagues often have called me a “mad genius,” with the usual connotations that the label suggests—“brilliant,” “eccentric,” “unorthodox,” “creative,” and “inspiring.” At the same time, my students tell me if my socks do

England, and the United States. . . . As with queer, the broad scope of mad carries the drawback of generality but also the power of mass.”).

3 Id. at 12 (“The well/unwell paradigm has many problems, particularly its implication that a mad person needs to be ‘cured’ by some means. One material consequence of this view is that mental health insurance operates on a ‘cure’ basis, demanding progress reports from therapists and social workers, and cutting off coverage when the patient is deemed to have achieved a sufficiently ‘well’ state.”).

4 Id. at 2 (“That film [A Beautiful Mind] upholds a truism about mental illness, namely its link to creative genius. . . . The commonsense link between madness and genius arises again and again and again, in stories about real people like composer Robert Schumann, who is said to have been bipolar . . . .”); id. at 16 (“In her ‘bipolar book,’ . . . A Mind Apart, Susanne Antonetta argues that neurorodiversity acts as a positive force in human evolution, enabling alternative or creative ways of thinking, knowing, and apprehending the world.”). I have also been “diagnosed” (or misdiagnosed) repeatedly with Bipolar Disorder II. See infra Part II.
not match or my shirt is only half tucked into my jeans.\(^5\) I certainly get “mad” or “angry,” which is more scientifically defined as feeling “inappropriate, intense anger or [having] difficulty controlling anger.”\(^6\) Quite literally, I have often been “mad” at “school”—the school at which I am studying or working. Last, while I usually do not refer to myself in this way, I am “mad” in the sense that I am mentally ill; oscillating like a yo-yo, I regularly experience periods of mania, irritability, insomnia, anxiety, and depression, often all in the same day. Even if, rhetorically, medicine and science cannot define a “normal” mind, symptomatically, I do not feel “normal.”

To the best of my knowledge, I now join only two other law professors who have written narratives about how their own chronic mental illness affects their participation in academic life.\(^7\) I have Borderline Personality Disorder (“BPD”), “a condition in which people have long-term patterns of unstable or turbulent emotions, such as feelings about themselves and others.

\(^5\) *Id.* at 2 (“Faculty members who display quirky behavior are sometimes regarded with affection: think of funny Professor X, who mumbles in the hallways and perhaps wears outlandish outfits.”).


\(^7\) *See* JAMES T.R. JONES, A HIDDEN MADNESS (2012) (describing his decades-long struggle with bipolar disorder); James T.R. Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor*, 57 J. LEGAL EDUC. 349 (2007) (same); ELYN R. SAKS, THE CENTER CANNOT HOLD: MY JOURNEY THROUGH MADNESS (2008) (chronicling her struggles with schizophrenia); *cf.* Price, *supra* note 1, at 130 (“[O]ne study of U.S. law schools reveals that just over 1 percent of their faculty were reported as having disabilities. . . . Specific information on faculty with mental disabilities is even more scarce.”).
These inner experiences often cause them to take impulsive actions and have chaotic relationships.\textsuperscript{8} My reality is defined by black-or-white, right-or-wrong, and good-or-bad thinking, although I do not dissociate or live on the border of psychosis and neurosis.\textsuperscript{9} For that reason, “borderline” is an unfortunate name for this personality disorder and an example, in Price’s words, of how “persons with mental disabilities are presumed not to be competent, nor understandable, nor valuable, nor whole.”\textsuperscript{10}


\textsuperscript{9} Despite its name, BPD “is no longer thought of as being related to psychotic disorders (and the term ‘neurosis’ is no longer used in our diagnostic system). Instead, BPD is recognized as a disorder characterized by intense emotional experiences and instability in relationships and behavior.” Kristalyn Salters-Pedneault, Why Is It Called Borderline Personality Disorder?, Borderline Personality, Health, ABOUT.COM (Oct. 19, 2009), http://bpd.about.com/od/faqs/f/BPDname.htm; see Anneli Rufus, The Uncertainty Curse, PSYCHOL. TODAY (Mar. 28, 2011), http://www.psychologytoday.com/blog/stuck/201103/the-uncertainty-curse (‘I’ve come to believe she had Borderline Personality Disorder, a condition whose characteristics—identity issues, self-loathing, negativity, black-and-white thinking, and a sense of emptiness inside—describe her perfectly and tragically. It’s arguably the most misleadingly named disorder in the DSM, because one wastes a lot of time wondering: the borderline between what and what? Originally it was neurosis and psychosis. Later that distinction was retired. This disorder needs a clear new name.’).

\textsuperscript{10} Price, supra note 1, at 26; cf. Leonard Holmes, Borderline Personality Disorder: A Diagnosis with a Bad Rap, Mental Health, ABOUT.COM (June 2, 2010),
While mental health professionals commonly believe that “clinicians should help people with borderline personality disorder to avoid black-and-white thinking, such as right/wrong and good/bad, and all-or-nothing styles of thinking,”¹¹ this belief presumes that the “borderline” mind is unsound or abnormal and that medicine and science can objectively define the “normal” mind. As Price notes, “such [disordered] minds show up all the time, in obvious and not-so-obvious ways, . . . and recognizing their appearance is not a yes-no proposition, but rather a confusing and contextually[]dependent process that calls into question what we mean by the ‘normal’ mind.”¹² The array of diagnoses in the Diagnostic and Statistical Manual of Mental Disorders (DSM) is “so copious that [the DSM] seems to suggest that ‘human life is a form of mental illness.’”¹³

I have chosen to use the power of my own personal experiences with mental illness placed within the context of Price’s work to fight the stigma of mental illness and to begin to

http://mentalhealth.about.com/cs/personalitydisordrs/a/borderline.htm (“Mental health professionals are partly responsible for the bad rap that patients with this diagnosis have received. Some mental health professionals use this diagnosis for their female patients who are a ‘pain in the ass.’ If you are female and are seen as a ‘difficult patient’ you may be at risk for getting this diagnosis.”).

¹¹ See, e.g., RICHARD K. RIES ET AL., ASSESSMENT AND TREATMENT OF PATIENTS WITH COEXISTING MENTAL ILLNESS AND ALCOHOL AND OTHER DRUG ABUSE: TREATMENT IMPROVEMENT PROTOCOL (TIP) SERIES 9, at 57 (1994).

¹² Price, supra note 1, at 3–4.

¹³ Id. at 3 (quoting Lawrence J. Davis, The Encyclopedia of Insanity, HARPER’S MAG., Feb. 1997, at 61, 61).
overturn the barriers that mentally ill academics encounter in legal education. When I have tried
to write about mental illness in higher education analytically, the writing has been forced,
clinical, and devoid of the intense emotions that this issue raises.\textsuperscript{14} Even if such analytical
writing with a thesis-driven academic argument is more “coherent,” I wonder, as Price does, if
the “demonstration of coherence indicates a stronger mind.”\textsuperscript{15} The medical paradigm is
incoherent in that it presumes an “objective, benign, and stable authority,”\textsuperscript{16} which is often not
the case as evidenced by the numerous and conflicting mental diagnoses I have received over the
last twenty years.\textsuperscript{17} Furthermore, medicine has trouble grappling with the academic who is
hyper-functional professionally but dysfunctional emotionally—therapists, as well as colleagues
and administrators, have often minimized the gravity of my symptoms because I am “high
functioning.” The legal paradigm is not much better because even with the Americans with
Disabilities Act, courts and commentators have struggled for over twenty years with how to fit
employees with “mental disabilities” into the framework of the act.\textsuperscript{18}

\textsuperscript{14} See Price, supra note 1, at 31–32 (“It would seem . . . that reason and emotion reside together
quite comfortably, and hence, that there is ample space to theorize rhetoricity for those with
mental disabilities.”).

\textsuperscript{15} Id. at 6.

\textsuperscript{16} Id. at 36–37.

\textsuperscript{17} See infra Part II.

\textsuperscript{18} See, e.g., James Concannon, \textit{Mind Matters: Mental Disability and the History and Future of
the Americans with Disabilities Act, 36 LAW \& PSYCHOL. REV. 89, 107 (2012) ("Although
individuals with mental impairments were not failing to establish protected-class status more
than plaintiffs with physical impairments, such plaintiffs were still losing at an alarming rate pre-}
Rather than writing as an “insider”—a “straight, white, educated, male American citizen”\(^\text{19}\)—analyzing “who is mentally disabled . . . , and what we do once we have decided a

Amendments Act.”); Michelle Parikh, Note, *Burning the Candles at Both Ends, and There Is Nothing Left for Proof: The Americans with Disability Act’s Disservice to Persons with Mental Illness*, 89 Cornell L. Rev. 721, 745 (2004) (“The incompatibility of the disability definition with mental illness . . . has played out quite starkly in recent case law. The two main shortcomings of the ADA’s treatment of mental illness are borne out in the case law of the lower federal courts. By and large, mentally ill individuals who attempt to gain protection under the ADA are unsuccessful. On a conceptual level, it is difficult for individuals who are mentally ill and in the workforce to juggle the dual requirements of disability and qualified individual status. An individual who clearly suffers from a mental illness that has a detrimental effect on her work functioning may look to the statute for a safe haven. What she finds instead are formalistic, rigid requirements, which incur more qualifications and caveats with each Supreme Court decision. What the ADA drafters intended to be an individualized, case-by-case inquiry has turned into a series of obstacles and hoops, as individuals attempt to translate the complexities of their experiences into the ‘buzzwords’ of the courts’ opinions.” (footnotes omitted)); see also infra Part III.A.

\(^{19}\) Carolyn Grose, *A Field Trip to Benetton . . . and Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 Clinical L. Rev. 107, 110 & n.4 (1997). Grose defines an “outsider” as “someone who does not have access to the channels of power and communication in this society. Practically speaking . . . this means someone who is female, of color, lesbian, gay, bisexual, under educated, low-income, poor, disabled, undocumented, non-English speaking, etc.). Id.
person should be labeled as such,”20 I write this narrative as an “outsider” looking in at the misassumptions of the “normal-minded” in legal education about those academics with mental illness.21 Traditional critiques of “outsider” narratives are that they do not “fit into the legal framework of verifiable truths that creates new legal principles,”22 but that presupposes, in my

20 Price, supra note 1, at 2.

21 See Marc A. Fajer, Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship, 82 GEO. L.J. 1845, 1847 (1994) (“We can tell stories about ourselves, not so much to show how we are representative of our group, but how the society makes essentializing assumptions about us because of the groups to which we belong. These stories do not purport to show that all members of the group behave a certain way. Instead, they demonstrate that people commonly believe members of a group conform to the stereotype or at least that the relationship between the stereotype and reality is complex.”); Paul Gewirtz, Introduction to Law’s Stories, in NARRATIVE AND RHETORIC IN LAW 1, 13 (Peter Brooks & Paul Gewirtz eds., 1996) (describing “outsider” jurisprudence or the “turn to narrative” as a “clear offshoot of the further loss of faith in the idea of objective truth and the widespread embrace of ideas about the social construction of reality”); Grose, supra note 19, at 114 n.17 (citing sources).

22 Grose, supra note 19, at 116; see Kathryn Abrams, Hearing the Call of Stories, 79 CAL. L. REV. 971, 978 (1991) (“Despite the professed intentions of [the] authors, [the story] does not help [readers] think about ameliorative legal reforms. . . . The experience conveyed by the narrative does not seem to translate automatically into a new rule; and the narrative scholarship seems to provide no ‘normative framework’ for achieving that translation.”); Mark Tushnet, The Degradation of Constitutional Discourse, 81 GEO. L.J. 251, 252–60 (1992) (arguing that
case, that there is an objective truth about mental diagnoses and mental illness, which there is not, as I show in Part II. As Jane Baron notes,

[T]he notion that storytellers must justify departures from “the rules” of mainstream scholarship “as they exist,” as well as from the “ordinary understanding” or the “conventional standard” of truth . . . [is] precisely what many storytellers dispute, namely, that mainstream, ordinary, and conventional standards are just “there” and themselves already justified.\(^{23}\)

In other words, the supposed objective truth about mental illness is no more valuable than my firsthand experience with mental illness in academia. Without any scientific, objective meaning of the “normal” mind, narratives matter.

Price gives further warning about the use of narratives of mental illness. She cautions that “such narratives often reify the dominant script of disability as an individual tragedy (and potential source of triumph when ‘overcome’).”\(^{24}\) She calls for academics with mental disabilities to be heard and respected, “not in spite of their mental disabilities, but with and through them.”\(^{25}\) We do not need more feel-good stories about those who have succeeded

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\(^{24}\) Price, *supra* note 1, at 178.

\(^{25}\) *Id.* at 8. Unfortunately, Professor Jones’s narrative falls subject to this criticism. *See* Jones, *Walking the Tightrope of Bipolar Disorder: The Secret Life of a Law Professor, supra* note 7, at 373 (“I want to demonstrate that those with mental illness can have full and satisfying professional and personal lives, and they need and should not endure stigma or doubt as to their ability to perform their personal or employment duties. I show this by pointing out that someone who has a severe bipolar disorder can graduate with high honors from an elite college
Despite a mental illness. I try to write the “counter-diagnosis” that Price calls for. My mind is objectively neither sound nor unsound, but it is the source of my greatest assets and my greatest deficits in academia. To “cure” my mind, using the medical paradigm, is to zap me of all of my strengths.

Preparatory school; earn Phi Beta Kappa at a prestigious college (graduating with highest distinction) and the Order of the Coif at a top law school (graduating with distinction), where he served on law review and finished second in his class; work successfully at a Wall Street law firm; clerk for two federal judges; be a finalist for a clerkship with the Chief Justice of the United States; practice law as a member of the United States Supreme Court and Florida Bars; teach at the University of Chicago Law School; marry successfully; earn tenure and full professor status by teaching, service, and publication at a law school where no one knew I have a severe mental illness; and become a nationally known expert on an important social issue. If that message gets across, and as a result someone is encouraged to reach for everything in life despite having a mental disease, this article was worth writing and my ‘secret’ was worth disclosing.” (emphasis added)).

26 See Price, supra note 1, at 104 (“I found the reference to courage and heroics disturbing, though not surprising; here was the familiar overcoming narrative, rehearsed yet again.”).

27 Id. at 176–77.

28 Cf. Andrea Sachs, A Memoir of Schizophrenia, TIME (Aug. 27, 2007), http://www.time.com/time/arts/article/0,8599,1656592,00.html (“My mind has been both my best friend and my worst enemy,” says Elyn Saks, the author of The Center Cannot Hold (Hyperion).”).
In Part II of this article, I describe my own experiences with the mental health system, as well as how mental illness has affected me in law school, as a lawyer, and most importantly, as a law professor. In Part III, I use my own narrative as a lens to analyze Price’s discussion of the rhetoric of mental illness in higher education. I start with how the law interacts with mental illness, use that interaction to criticize Price’s damaging label of “mental disability,” and discuss her analysis of teaching and learning, collegiality, and productivity. Part IV concludes with a discussion of how we should frame the discourse about mental illness in legal education. Rhetoric matters, but law, medicine, and narrative matter as well.

II. **MY STORY**

Price notes the “proliferation of stories” about mental illness as “evidence of two important truths about disorderly minds. First, such minds show up all the time, in obvious and not-so-obvious ways; and second, recognizing their appearance is not a yes-no proposition but rather a confusing and contextually dependent process that calls into question what we mean by the ‘normal’ mind.”²⁹ I have experienced those truths firsthand, and now I share my story.

A close friend, with no formal training in psychology or psychiatry, recently diagnosed me with Borderline Personality Disorder,³⁰ after I had been diagnosed by psychologists and

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³⁰ The criteria for BPD are as follows:

A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:

1. frantic efforts to avoid real or imagined abandonment. **Note:** Do not include suicidal or self-mutilating behavior covered in Criterion 5.

2. a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.
psychiatrists at various times over the preceding twenty years with Dysthymia, Major Depressive Disorder, Generalized Anxiety Disorder, Panic Disorder, Bipolar Disorder, Narcissistic Personality Disorder, Dependent Personality Disorder, ADD, and ADHD. While I perhaps had

3. identity disturbance: markedly and persistently unstable self-image or sense of self.

4. impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating). **Note:** Do not include suicidal or self-mutilating behavior covered in Criterion.

5. recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior.

6. affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).

7. chronic feelings of emptiness.

8. inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights).

9. transient, stress-related paranoid ideation or severe dissociative symptoms.

DSM-IV-TR, supra note 6, § 301.83.

**31** The diagnosis of mental disorders is very complex and imprecise. *See* Erica B. Moses & David H. Barlow, *A New Unified Treatment Approach for Emotional Disorders Based on Emotion Science*, 15 CURRENT DIRECTIONS IN PSYCHOL. SCI. 146, 147 (2006) (“Possible explanations for these high levels of comorbidity have been reviewed extensively and include overlapping definitional criteria, varying base rates of occurrence in different study settings, and a possible sequential relationship among the disorders such that features of one disorder serve as risk factors for another. Another possible explanation for this comorbidity is the presence of a ‘negative affect syndrome.’ The collective symptoms of emotional disorders have been theorized
symptoms of some of these mental “disorders,” I felt as if I was not being heard, as none of the diagnoses captured how my illness affected me in the way that the diagnosis of BPD did. For example, I was being evaluated by a resident in the Mood Disorders Clinic at one of the largest research hospitals, and he kept asking me to define my last “manic” episode that lasted at least a couple of weeks and became frustrated that I could not do so. He and the attending psychiatrist diagnosed me with Bipolar Disorder anyway. When I later talked to a psychologist about treatment for BPD, she told me that I was mistaken about my diagnosis because I was too “bright” to have BPD.

I finally found a psychologist who listened to me, although ironically she was an unlicensed psychologist who was practicing under her supervisor’s license. Once I had a diagnosis from my psychologist, I also found a psychiatrist who agreed that I had BPD. While I agree with one commentator that “the DSM-IV is a book of dogma,” which had failed me for twenty years, I am a casebook study for the symptoms of BPD. The DSM, while giving my illness a name and thus helping me feel less isolated and more connected to “patients” who share this disorder, stigmatizes me by labeling my diagnosis as a “personality disorder,” a personal indictment of who I am. BPD is an Axis II diagnosis, which is considered “less treatable and as merely variable responses emerging from a more fundamental disorder.” (internal citations omitted)).

33 See Elise Stobbe, Psychiatry Discriminates Against People with Borderline Personality Disorder, BRAINBLOGGER.COM (June 20, 2006), http://brainblogger.com/2006/06/20/anti-stigmatization-psychiatry-discriminates-against-people-with-borderline-personality-disorder/ (“There may be no other psychiatric diagnosis more laden with stereotypes and stigma than
insurable” than disorders with an Axis I diagnosis, such as depression, bipolar disorder, and schizophrenia.\(^\text{34}\)

To offer some context to my review of Price’s book, I share some of my experiences with mental illness in law school, as a lawyer, and as a law professor.

A. LAW SCHOOL

I began at Harvard Law School in the fall of 1992 after graduating from Yale College in 1991 and spending a year abroad teaching at a private boys’ boarding school in Sydney, Australia. While I did experience some depression during college and in Australia, I started at Harvard unaware of my emotional limitations.

Near the middle of my first year, I became disillusioned with my experience at Harvard Law School. That was not atypical,\(^\text{35}\) especially before Elena Kagan became dean.\(^\text{36}\) Most first-

Borderline Personality Disorder. People who live with this label — the majority being female — often have problems accessing good mental health services. Unlike the stigmatization that society puts on mental illness, the stigma associated with BPD often comes from mental health professionals and their patronizing attitudes. Many psychiatrists will not treat BPD patients, or they may limit the number of BPD patients in their practice or drop them as ‘treatment resistant.’ Often attempts to treat borderlines fail, and some professionals blame the patient for not responding to treatment. It is often undiagnosed, misdiagnosed, or treated inappropriately.


\(^{35}\) See Peter Barton Hutt, Food and Drug Law: Journal of an Academic Adventure, 46 J. LEGAL EDUC. 1–2 (1996) (“I remember long talks late at night venting my frustration and arguing about
year classes were large, with about 135 students, and as a result, I became alienated from my classmates, the faculty, and the institution. I still remember the first question on Duncan Kennedy’s Torts exam. This question was the one he called the “bullshit question”—“Discuss some issue we studied over the course of the semester.” I thought much of my first year of legal education at Harvard was “bullshit.”

how law should really be taught to make it interesting and even exciting. I left Harvard Law School feeling unfulfilled, unsuccessful, and alienated. Nonetheless, those vivid memories did more to entice me to consider teaching food and drug law at Harvard than to discourage me. I was intrigued by the challenge of trying to teach law the way I felt it should have been taught when I was there.”); Kevin K. Washburn, *Elena Kagan and the Miracle at Harvard*, 61 J. LEGAL EDUC. 67, 67 (2011) (“For most of the past fifty years, attending Harvard Law School was a miserable experience for the majority of its students. The tremendous jubilation on acceptance quickly soured after students arrived on campus. While some students took the Harvard experience in stride, recognizing it as the price of admission to the school they had first learned about in *The Paper Chase* or *One L*, many became unhappy during the first year and stayed that way through the rest of their law school careers. To be sure, students appreciated the tremendous opportunities that a Harvard law degree provided, but many were alienated not only from the institution, but even their own classmates, during their time at the law school. This alienation often continued long after law school. To meet a recent Harvard Law grad was sometimes to meet an embittered person who vowed never to give a dime to the institution.”).

The second semester of my second year, I was taking the late Phil Areeda’s antitrust class. Professor Areeda was a “master of the Socratic method.” On one of the first few days of class, as I was trembling in my chair, he called on me. I had no idea what the answer to his question was, and he compassionately moved on to another student. Afterward, I panicked at the thought of going back to his class again. I stopped going to it, along with the rest of my classes that semester. I became too depressed to get out of bed except to make my daily trek to Harvard Square to have a chocolate milkshake at Herrell’s Ice Cream. I did not think I would finish law school.

I did make it back for my third year, but on the mornings of exams I would often feign physical illness because I was too scared to take them. I finally went to a Law School psychiatrist who arranged for me to take my exams in a quiet, separate room, which was actually the make-up room for other students writing exams. He referred me to a therapist because the Law School could not provide the “type” of therapy that I needed. I wondered at the time and still wonder now what that “type” of therapy was.

In my corporations class in my third year, I was assigned to be “on call” on a certain day. The thought of having to perform in front of over one hundred students terrified me. The professor’s secretary told me that I could be excused if I got a doctor’s note. I got one, and with

37 Clark Byse, In Memoriam: Phillip E. Areeda, 109 HARV. L. REV. 894, 896–97 (1996) (“He was a master of the Socratic method. . . . The essence of his approach in teaching was well expressed by a recent graduate who wrote that, at first, the Socratic experience produced tension and anxiety, but that he had become grateful for the analysis that it revealed—grateful for ‘a rigorous and yet understanding style of teaching.’”). I never got over the “tension and anxiety” from Areeda’s teaching.
notes and made-up illnesses, I “managed” my mental health while at Harvard. I graduated in 1995, but skipped my graduation because I was disillusioned and alienated by my law school experience.

B. PRACTICING LAW

Between 1995 and 2002, I worked at many different law firms in either tax or intellectual property litigation, and I spent two years trying to start my own firm. My tenure at various firms lasted between six days (my first job out of law school) to eighteen months. I quit jobs because of some combination of depression, irritability, anxiety, and boredom, and from one job I was fired because I “resisted” the law firm hierarchy. I was always able to get my next job without much ado about why I left the previous job. I always made an “impulsive” decision and took the “next” job offered. I consistently thought the problem was with the firms and not with me. At every firm where I worked, I felt empty and alienated—I found no meaning in the work, was bored with its tediousness, and did not like the firms’ hierarchical and undemocratic structures.38

38 My experience was not atypical. See Robert Granfield, The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers, 41 LAW & SOC’Y REV. 113, 134 (2007) (“Many scholars have commented on the extensive alienation that lawyers experience, particularly within large law firms. Such alienation can contribute to high levels of stress and job dissatisfaction. Indeed, many lawyers lament that the practice of law is merely a business and that the atmosphere of law firm practice is bureaucratically stifling, leaving many lawyers chronically unfulfilled and discontented. Much of the alienation that lawyers experience, particularly in larger law firms, stems from the ‘proletarian-like’ conditions that operate within these firms.”); Michael L. Rustad & Thomas H. Koenig, A Hard Day’s Night: Hierarchy, History and Happiness in Legal Education, 58 SYRACUSE L. REV. 261, 263 (2008) (“Hierarchy
I knew I could not survive in the legal profession and had reached a dead end. I was deeply depressed. For six weeks in December 2000 and January 2001, I was hospitalized at the Menninger Clinic, then in Topeka, Kansas. I participated in the Professionals in Crisis Program, and for the first time, I felt like less of an “outsider.” There were lawyers, doctors, businesspeople, and academics who had the same struggles with mood and personality disorders as me, and they were all educated with well-paying jobs. I went for career counseling while in the program, and the counselor, after administering a battery of tests, concluded that I should become a “deep sea diver.” I ignored that advice, but I did realize that I had always loved teaching, and decided to seek a career in which I could combine my passion for teaching with my background in law.

C. LEGAL EDUCATION

There is a “truism about mental illness, namely its link to creative genius. . . . The common sense link between madness and genius arises again and again and again, in stories remains a significant variable in predicting lawyer happiness for those excluded from elite law firms. The sifting and sorting of law school applicants into the different branches of the law is often an arbitrary and inefficient process. MacLeish suffered existential anxiety because the formalism of law practice stifled his creativity, just as Stefancic and Delgado’s example of a contemporary law firm associate who suffers from alienation, wondering “Whatever Happened to that English Major I Used to Be?” (footnotes omitted)).

39 Professionals in Crisis Program, MENNINGER CLINIC,
about real people like composer Robert Schumann, who is said to have been bipolar . . . “40

Much scientific research suggests that there is a high correlation between creativity and mood
and personality disorders, although the relationship between the two is complex (e.g., does
mental illness cause creativity or does creativity cause mental illness?). 41 In First-Rate Madness,

40 Price, supra note 1, at 2.

41 See, e.g., Erika Lauronen et al., Links Between Creativity and Mental Illness, PSYCHIATRY,
Spring 2004, at 81, 90—92; but see Charlotte Waddell, Creativity and Mental Illness: Is There a
Link?, 43 CAN. J. PSYCHOL. 166, 166 (1988) (“Creativity and mental illness have long been
popularly associated. Until recently, few studies have examined this purported association using
scientific methods. A spate of recent review articles, as well as memoirs of mental illness by
prominent, creative individuals, have coincided with scientific interest in possible associations
between creativity and mental illness. These studies, reviews, and memoirs have garnered media
attention and reinforced popular views that creativity and mental illness are positively associated.
. . . There is a long history of associating creativity and mental illness in western European
cultures, starting with Aristotle, who equated insanity with genius, and culminating in the ‘mad
genius’ controversy of the last two centuries. Many authors have described famous, creative
individuals who reportedly had mental illnesses. Recent accounts in popular media have touted a
link between creativity and various forms of mental illness. The popularity of asserting
connections between creativity and mental illness has also been fueled by recent memoirs of
mental illness by prominent gifted individuals. . . . In summary, much recent psychiatric and
popular literature has enthusiastically promoted an association between creativity and mental
illness. This enthusiasm, however, has not always been balanced with scientific evidence.”
(internal citations omitted)).
Uncovering the Links Between Leadership and Mental Illness, a professor of psychiatry and pharmacology at Tufts Medical Center argues that “the mad” make the best leaders in times of crisis because of their creativity, resiliency, empathy, and realism.42 I strongly believe that my “abnormal” mind has led to much of my success as a law professor: the same intense emotions with which I struggle fuel my passion, energy, and creativity. My “mad” mind is not only a personal liability, but also a professional asset.

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The faculty at Temple Law School’s James E. Beasley School of Law took a chance on me, and for two years, I taught as an Honorable Abraham L. Freedman Teaching Fellow and earned my LL.M. in legal education. After stops at the Southern Illinois University College of Law and the University of Tulsa College of Law, I have been at William Mitchell for four-and-a-half years. This is the longest I have held any job—I previously had never held any job for more than two years. I have become more self-aware and focused on my mental health since I started teaching at William Mitchell, which is why I have been able to last in the job.

I have regularly received outstanding teaching evaluations (4.7 to 5.0 out of 5.0 as overall scores), won the Teacher of the Year Award in my first year at William Mitchell, and have designed cutting-edge and creative transactional skills classes that combine negotiating and drafting, as well as a comprehensive pre-orientation workshop. My students regularly call me “brilliant,” “a wizard,” “demanding,” “compassionate,” “realistic,” and “creative.” I write scholarly articles in the areas of commercial law, legal ethics, and legal education, and I am

coauthoring the second edition of a leading bankruptcy text. I am the Associate Editor-in-Chief of *The Business Lawyer*, the legal journal with the widest circulation in the United States. I edit, cite-check, and proofread over 1,200 book pages of manuscript annually. I do significant internal service, including chairing our curriculum committee over the last two years, in which I spearheaded significant reform of the first-year and skills curricula.

I do not want to belabor my success. My only point is that I am successful *because* of my mental illness, not *despite* my illness. At the same time, I face extraordinary struggles: frequent mood swings over the course of a day; feelings of emptiness, abandonment, and low self-esteem; difficulties in interpersonal relationships; self-injurious behaviors such as cutting and addictions; and even paranoia. I describe some of these challenges below.

1. **Feelings of Abandonment and Emptiness and Difficulty in Interpersonal Relationships**

   I spend much of my day in front of the computer, responding to e-mails often within minutes. I write, edit, prepare for class, and communicate with colleagues using my laptop. I am more comfortable in front of my computer than with face-to-face interactions. When I do not get any e-mails for a period of time, I feel abandoned—lost, empty, and unaware of what to do. I have low self-esteem even when a successful class or program ends. I look for external sources of gratification when none exist. The highs often become lows. I focus on the failures in my life (e.g., the jobs I could not keep) rather than my successes as a law professor. Mentors become villains, and villains become mentors.43 I have such a strong sense of “right” and

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43 See John Cloud, *The Mystery of Borderline Personality Disorder*, TIME.COM, at 1 (Jan. 8, 2009), http://www.time.com/time/magazine/article/0,9171,1870491,00.html (“Borderline patients seem to have no internal governor; they are capable of deep love and profound rage
“wrong” that people switch on me quickly. I have found, however, that since entering academia, I am more loyal to those who are aware of my illness, and they are more loyal to me—hence, my willingness to share my narrative.

2. 

Addiction

Last year, I became addicted to benzodiazepines, which has happened numerous times since law school. My mother had to hide my medicine from me when I was living at home in my twenties to prevent me from taking too much. Last fall, I had begun waking up in the morning shaking and sweating, overwhelmed with all the work that I had to do. By the second semester, the thought of teaching caused tremendous anxiety, despite the fact that I had taught Sales and Secured Transactions over a half-dozen times each. I had lost confidence in myself and did not believe I could be a good teacher again. For the first few weeks of the semester, I either cancelled class or taught in a way that manifested my illness “in forms ranging from ‘odd’ remarks to lack of eye contact to repetitious stimming.” Mental impairments are not truly “invisible,” although students ironically are likely to perceive that these behaviors are a function of eccentricities and not of any illness.

I was already on 45 milligrams of Temazepam (a benzodiazepine) and 12.5 milligrams of Ambien CR (addictive, similar to benzodiazepines), both prescribed for me, when the psychiatric physician assistant I was seeing prescribed .5 to 1 milligram of Xanax to take “as needed.” The pills provided instant relief—I thought I had found the “magic bullet”—a feeling that I have had almost simultaneously. They are powerfully connected to the people close to them and terrified by the possibility of losing them—yet attack those people so unexpectedly that they often ensure the very abandonment they fear. When they want to hold, they claw instead.”)

44 Price, supra note 1, at 18.
repeatedly over the last twenty years each time I have tried a new medication. However, I quickly had to take more and more pills to have the same effect, and I quickly began to use the Xanax even on the weekends to sleep and escape from my reality.

Each time I tried to cut back, I felt more and more anxious, and I did not know whether that was from the original anxiety or rebound anxiety from not taking enough Xanax. I often became confused, and my cognitive abilities seemed to slow. I finally saw a new psychiatrist, and she told me I had an addiction. I had become impulsive in my use of anti-anxiety medications to try to numb my reality. Although at first she wanted to hospitalize me, she instead used a Valium taper to help me successfully get off all benzodiazepines (and the Ambien). Ironically, at least some researchers believe that benzodiazepines are contraindicated for those with BPD.45 Where does the objective truth lie—take the benzodiazepines for anxiety or avoid them altogether? Even mental health professionals cannot agree. I must admit, although I am “free” from benzodiazepines, I still take a Valium when I cannot withstand the anxiety.

3. Cutting

I have never been suicidal or attempted to commit suicide, although I often want to crawl into a hole (or bed) and escape. Over the past couple of years, I have started to engage in self-mutilating behavior, usually cutting myself on my arms or legs with a razor or scissors. For example, I have cut when I did not receive a position at my law school that I believed I was promised, when I was overwhelmed with frustration that the law school’s response to the decreasing demand for legal education was too slow, or when administrators and colleagues

45 Robert S. Bobrow, Benzodiazepines Revisited, 20 Fam. Prac. 347, 348 (2003) (“Patients with borderline personality disorder are at great risk for dependence, and benzodiazepines are contraindicated.”).
could not distinguish between my mental illness and character “flaws” and criticized me for manifestations of my illness (e.g., talking too loudly in class and avoiding conflict). I have “a hard time regulating, expressing or understanding [my] emotions. Physical injury distracts [me] from these painful emotions or helps [me] feel a sense of control over an otherwise uncontrollable situation.”

Cutting is a rhetorical device, a communication that I am in emotional pain. To others it conjures up images of violence, which feeds into the stereotype that the mentally ill are “dangerous.” It is not the case that “[p]eople who self-injure are crazy and/or dangerous. . . . Self-injury is how they cope. Slapping them with a ‘crazy’ or ‘dangerous’ label isn’t accurate or helpful.”

Ironically, this rhetorical device is not effective to the “insider”—frequently after I cut, faculty, students, and staff notice but ask me how I “fell.” Cutting is part of my “outsider” narrative.

4. Mood Swings

Every day is like a roller coaster: I go through periods of mania, anxiety, irritability, and depression, often within the same hour. Those who know me well find my mood swings unpredictable. For example, I often feel a sense of mania from a small accomplishment. When I ran the William Mitchell Fellows Program, a leadership development program for students with the exceptional capacity for leadership in law school and the legal profession, I felt an immediate “high” when I recruited a student successfully to William Mitchell. I screamed the student’s


name out of the car window and rewarded myself with ice cream or coffee. A few minutes after that “high,” I started feeling a “low,” wondering when the next victory would come along.

5. Anger

Anger has plagued me since entering teaching, especially when I feel as if I have been treated “unjustly.” When I visited another school, I lost my temper with the associate dean, who told me that I could not reschedule classes to enable me to go on job interviews. While I was a teaching fellow at Temple, I yelled at a faculty member who did not inform me about a workshop that I was supposed to attend. Even at William Mitchell, I often get angry when “rules” and “processes” are not followed, for example, when tenure subcommittees are not appointed by the specified date set in the Tenure Code. My emotions overwhelm me in my quest for “justice,” although I do not believe my understanding of “justice” is wrong.

6. Paranoia

“Paranoid ideation” is defined as “suspiciousness or the belief that one is being harassed, persecuted, or unfairly treated.” This commonplace definition exposes the subjectivity of the DSM-IV-TR, despite the notion that its authors have “increasingly adhered to a model of mental disability as a measurable and biological phenomenon.” Is it problematic or symptomatic of an illness that one feels “unfairly treated,” especially when “fairness” is inherently subjective? For example, in the fall of my third year at William Mitchell, the dean

48 Cloud, supra note 43, at 1 (“What defines borderline personality disorder—and makes it so explosive—is the sufferers’ inability to calibrate their feelings and behavior. When faced with an event that makes them depressed or angry, they often become inconsolable or enraged.”).


50 Price, supra note 1, at 36.
decided that the “normal” waiting period for tenure was four-and-half years on the tenure-track, despite the fact that our Tenure Code states that “[t]he Board of Trustees may consider granting tenure at any time during a faculty member’s service with William Mitchell.”\textsuperscript{51} As I had been teaching for seven-and-a-half years at that time with significant scholarship and service, I believed that the dean’s interpretation was unfair and inconsistent with the language that I thought was black and white. One year later, administrators and colleagues were still puzzled as to how I felt I was treated unfairly. Their reaction, more so than the dean’s initial decision, made me feel as if I was being “pushed out of the societally defined space of the ‘normal.’”\textsuperscript{52}

On the subject of paranoia, I do obsess over how faculty, staff, and students perceive me when my symptoms of mental illness are acute. I usually spend less time at the office, am less focused and responsive, and worry that those who do not understand mental illness or do not know that I have a mental illness will judge me “unfairly.” In hindsight, my reactions are, to some extent, irrational. Yet, at the same time, when I explained my mental illness to one colleague, she said that she hoped I returned to “normal” soon, presupposing that there is a “normal” mind. Likewise, in writing about my accommodations, the dean quite innocently referred to “flare-ups” of my illness, as if the illness came and went and was somehow separate from who I am. While my symptoms do vary from time to time, they are not like a rash that can be “cured” with a magic bam.

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\textsuperscript{52} Price, supra note 1, at 29.
This background offers a glimpse into my “abnormal” mind. I now go on to discuss Price’s work without leaving my narrative behind.

III. MAD AT SCHOOL: THE INTERACTION BETWEEN RHETORIC AND THE LAW

As a professor of English who teaches composition and rhetoric, Price analyzes “madness” in academic life from the perspective of rhetoric and academic discourse. As a law professor, the starting point for my analysis is legal protections for academics with mental illness. In this part, I discuss five areas where our analyses overlap: legal constructs, labels of the mentally impaired, teaching and learning, productivity, and collegiality.

A. LEGAL CONSTRUCTS

The Americans with Disabilities Act (“ADA”) has largely failed college and university faculty with mental disabilities.\(^{53}\) In a 2003 study, Suzanne Abram found that about 93 percent of “disabled” faculty, including those with mental or physical impairments, lost their cases under the ADA.\(^{54}\) As Abram explains,

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53 See Susan Stefan, “You’d Have to Be Crazy to Work Here”: Worker Stress, the Abusive Workplace, and Title I of the ADA, 31 LOY. L.A. L. REV. 795, 805 (1998) (“[J]udicial assumptions about the nature of psychiatric disabilities and essential employment functions have resulted in the near-total failure of the ADA to protect individuals with psychiatric disabilities from employment discrimination.”); Kathleen D. Zylan, Comment, Legislation that Drives Us Crazy: An Overview of “Mental Disability” Under the Americans with Disabilities Act, 31 CUMB. L. REV. 79, 80 (2001) (“Particularly for the mentally ill, the ADA has failed to prevent discrimination in the workplace.”); see also supra note 18.

In short, courts have demonstrated a proclivity to dismiss ADA actions brought by disabled, or allegedly disabled, professors. The actions often fail because the faculty members cannot walk the fine line between being disabled _enough_ and being _too_ disabled. A disabled professor must construct his complaint so that he is demonstrably able to perform the essential functions of his position with reasonable accommodation and yet not so disabled that he is unable to perform his duties with accommodation. In the majority of cases, the plaintiff professors seem unable to place themselves within this narrow range.\(^55\)

Abram’s study, of course, could not account for faculty with claims under the ADA who never brought their cases to court.

Price glosses over one of the biggest hurdles to “mad” faculty succeeding under the ADA—they must prove that they have a “disability” covered by the act.\(^56\) The definition of “disability” provides as follows:

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\(55\) Abram, _supra_ note 54, at 11.

\(56\) _See_ ROTHSTEIN & IRZYK, _supra_ note 54, § 4:9, at 414 & n.30 (“Mental impairments as a...”)

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disability discrimination, they fare no better than plaintiffs in non-academic lawsuits. By far, the majority of college and university instructors who sue under the ADA lose their cases. Worse yet, they lose them at the summary judgment stage. Since the standard for summary judgment is the absence of any genuine issue of material fact, or the inability of a reasonable jury to find for the plaintiff, it is particularly ominous that disabled faculty lose their cases at this early stage in the litigation, without obtaining the opportunity to put their cases before a jury.” (footnote omitted)); _see also_ LINDA ROTHSTEIN & JULIA IRZYK, _DISABILITIES AND THE LAW_ § 3:26, at 334–35 & n.2 (4th ed. 2012) (“In some cases, faculty have argued that their denial of promotion or tenure has been related to a disability. The courts have generally found, however, that even if a disability is related to inadequate importance in the area of teaching or scholarship, it does not excuse performance standards. In most cases, the courts are finding that the institution’s action was based on nonperformance, not on disability.”).
a physical impairment that substantially limits one or more major life 
activities of such individual;
(B) a record of such impairment; or
(C) being regarded as having such an impairment.\textsuperscript{57}

While the ADA expressly includes “working” as a major life activity,\textsuperscript{58} “[u]nder case 
law, being able to perform a single, particular job [e.g., that of a tenure-track or tenured 
academic] is not generally considered a substantial limitation on the major life activity of 
working.”\textsuperscript{59}

While the faculty member with ADD or ADHD might be substantially limited in the 
major life activity of “concentrating,”\textsuperscript{60} or the academic with a learning disability substantially 
limited in the major life activity of “learning” or “reading,”\textsuperscript{61} the borderline or bipolar faculty 
member faces high hurdles in showing that he or she qualifies under the ADA’s definition of 
“disability.”\textsuperscript{62} For example, courts are unlikely to view “interacting with others” as a major life 
disability are complex. They are often difficult to diagnose, and there are also concerns about 
danger to self or others.”).

\textsuperscript{58} Id. § 12102(2).
\textsuperscript{59} ROTHSTEIN & IRZYK, supra note 54, § 4.8, at 396 & n.62 (citing cases).
\textsuperscript{60} See 42 U.S.C. § 12102(2).
\textsuperscript{61} See id.
\textsuperscript{62} See Ramona L. Paetzold, \textit{How Courts, Employers and the ADA Disable Employees with 
Bipolar Disorder}, 9 \textit{EMPLOYEE RTS. & EMP. POL’Y} J. 293, 314 (2005) (“In addition, [Bipolar 
Disorder] is easily doubted because its manifestations are often behaviors that everyone believes 
they have experienced. It is easy to say that all people have good days and bad days; all people
activity” when asserted by an individual with a mental impairment.63 Because the ADA

have periods of elation and periods of irritability; all people have days that they cannot
concentrate versus days when mental abilities seem stronger; and all people have periods during
which they exercise poor judgment. People with [Bipolar Disorder] may thus be dismissed as
merely hypersensitive, more emotional, lacking in self-regulation, or engaging in greater levels
of self-promotion. What are missing from this construction are the extremes that persons with
[Bipolar Disorder] experience, their lack of ability to control the extreme moods and concurrent
experiences, their risk of suicide, the progression of their disorder, and the debilitation that they
suffer as a result of the devastation done to their lives.”). I have often been dismissed by
administrators and colleagues as “hypersensitive,” “overemotional,” and “self-promotional.”

63 Wendy F. Hensel, Interacting with Others: A Major Life Activity Under the Americans with
Disabilities Act?, 2002 Wis. L. REV. 1139, 1142 (“A close evaluation of these cases reveals a
disturbing trend. Although the Supreme Court has strongly indicated that courts must evaluate
whether an activity is ‘major’ by looking to the activity’s significance to the population generally
rather than to the claimant specifically, the pattern in several cases suggests the contrary is
occurring. Courts appear far more likely to recognize interacting with others as a major life
activity, or a significant component of an established major life activity, when asserted by an
individual with a physical, rather than mental, impairment. Likewise, cases stemming from an
individual’s inability to interact with others as a result of other people’s unsubstantiated
prejudices concerning physical ability, rather than any specific individual action, are viewed
favorably by courts. In sharp contrast, where interacting with others is asserted by an individual
with a psychiatric impairment involved in questionable behavior in the workplace, courts are far
approaches “disability” from a medical model, focusing on the actual impairment itself, the “normal” person might not understand how the mentally impaired academic is “substantially limited” in a major life activity.\textsuperscript{64} However, from the psychosocial model that Price and I favor,\textsuperscript{65} “disabilities’ result from situations that are themselves disabling.”\textsuperscript{66} From that perspective, and not from the perspective of a “normal” person (including some judges), it is easier to understand how mentally impaired academics can be “substantially limited” in the major life activity of working,\textsuperscript{67} concentrating, or thinking, and why “interacting with others” less likely to recognize this activity as ‘major,’ even when the individual’s inability to interact effectively is a result of group harassment and exclusion.” (footnotes omitted)).

\textsuperscript{64} See Paetzold, supra note 62, at 324.

\textsuperscript{65} See Price, supra note 1, at 19 (“My appreciation of psychosocial has been affirmed by philosopher Cal Montgomery . . . ”).

\textsuperscript{66} Paetzold, supra note 62, at 320 (“Thus, from a social model perspective, the level of impairment experienced by a person with [Bipolar Disorder] is determined in part by the physical layout of the work area, interactions with supervisors, interactions with coworkers, the general culture within the work team or organizational group, general attitudes and behaviors within the work environment, flexibility in manner and time of working, and the nature of the task.”).

\textsuperscript{67}See id. at 369 (“The issue is not whether the employee with BPD is restricted from performing an entire class of jobs, or even a broad range of jobs within a class, but whether work circumstances are disabling her so that she cannot perform this job. If so, then the organization should be expected to make reasonable accommodations to assist her in performing the job. If
should be considered a major life activity. Maybe a court would even recognize “that having the capability to live one's life for some stable period of time without unpredictable and sometimes extreme mood swings may be a major life activity.”

To qualify for protection under the ADA, the faculty member must be “otherwise qualified” to perform the “essential requirements” or functions of the job, taking into account “reasonable accommodations” that could be provided. Price notes the potential clash between the “directive” to provide “reasonable accommodations” and “the faculty member’s burden to show that he or she can perform the ‘essential functions’ of the job.” The risk of academic institutions unnecessarily defining “essential functions” too narrowly is the exclusion of faculty members with mental impairments. I know firsthand the difficulty in getting reasonable

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68 Id. at 368.


70 Price, supra note 1, at 108.

71 Cf., e.g., Darcangelo v. Verizon Md., Inc., 189 F. App’x 217, 218 (4th Cir. 2006) (holding that bipolar employee did not qualify under the ADA because she could not interact with coworkers, an “essential function” of the employee’s position. In defining the position’s “essential functions,” the court relied on the defendant’s code of conduct, which “directs employees to be ‘respectful, cooperative, and helpful toward customers, suppliers, our co-workers, employees and the general public’ and to refrain from acting in ‘an abusive, threatening, discriminatory, harassing or obscene manner toward any employee or others with whom we come in contact
accommodations for mental illness.\textsuperscript{72} I have struggled to get the primary accommodation that I requested—written job responsibilities with significant advance notice of teaching and service during the course of business.”); Paetzold, \textit{supra} note 62, at 370–71 (“Employers should not be able to rely on stereotypical beliefs about the personal failings or other unsuitability of a person with [bipolar disorder] in establishing the essential job functions. For example, by saying that ‘getting along with others’ is an essential job function, it could be that employers are thinking that employees who cannot perform this function are simply deficient as people and could never be good employees or perhaps that they would introduce workplace conflict. Employers could also be reflecting on their own lack of experience and ideas regarding trying to accommodate interpersonal interactions, i.e., their inability to think ‘outside of the box.’ Courts must place a stronger burden on employers to justify their choices for essential job functions so as not to discriminate against persons with [Bipolar Disorder].”); \textit{id.} at 371 (“Although all job functions can be manipulated to have negative consequences for persons with [Bipolar Disorder], those requiring subjective assessment may leave far too much to employer discretion. Being friendly and getting along with others are subjectively evaluated job functions that are problematic because they are relatively incapable of objective measurement. It will always be difficult to know when the level of performance of such job functions is acceptable.”).

\textsuperscript{72} \textit{Cf.} Paetzold, \textit{supra} note 62, at 365–66 (“It may be difficult for the employee with [Bipolar Disorder] to articulate precisely how she is impaired or what she may need to assist her in doing her job effectively. Placing a greater burden on the employer to initiate the process, provide suggestions, communicate with doctors (with the employee’s permission), show patience, and generally facilitate the process would help to allow employees with [Bipolar Disorder] to remain in the workplace.”); Price, \textit{supra} note 1, at 111 (“[R]equests for accommodations for psychiatric
obligations. I was asked to have my doctor provide a list of “work restrictions,” rhetoric suggesting that I could not perform certain functions of my job. To the contrary, I perform all of the functions of my job but need reasonable accommodations to do so.

Price makes two wrong moves in criticizing the ADA and how courts have applied it. She questions whether the “essential functions” of the job of a law professor should change to accommodate faculty with disabilities. She asks, “For example, what if a professor who has agoraphobia or panic disorder must miss classes on an unpredictable basis. Does the burden lie on him to find a substitute, no matter how short the notice or distressing the situation that gave rise to his absence in the first place?” Supra note 1, at 108; see id. at 112 (“In this case [Horton v. Board of Trustees of Community College District No. 508], the professor claimed to have an ‘unspecified nervous disorder’ and missed time from teaching. The court ruled that since the ‘essential functions’ of a community college professor’s job are to ‘prepare, attend, and teach classes,’ and his disorder caused him to miss class, he did not qualify . . . . If presence is considered an essential function of an academic position, and presence is defined in terms of one’s own fleshy appearance in a classroom, then many faculty members with mental disabilities are de facto not qualified for their jobs.” (internal citations omitted)).
“essential function” of a law professor (which it should be), the professor who regularly and unpredictably misses classes (even with reasonable accommodations) is not fulfilling that function and should not receive protection under the ADA. To suggest otherwise is to suggest that faculty with mental impairments are less capable than faculty without impairments, which pushes faculty like me unwillingly “out of the societally defined space of the ‘normal.’”

Price’s second wrong move is to confuse the reader about the effect of the amendments passed in 2008 to the Americans with Disabilities Act. She is correct that the “Equal Employment Opportunity Commission states that disability should be defined without consideration of ‘medicines.’” That has been the state of the law since the amendments were passed. However, then she goes on to say, as if it were the current law, that “several judgments in 1999 and following found that an individual’s qualification for [being] disabled should be assessed in a corrected, that is, a ‘medicated’ state.” Those cases were decided before the amendments, which are clear in stating that mitigating measures, such as medication, should not be taken into account when considering whether a disability imposes a “substantial limitation.”

74 Price, supra note 1, at 29 “[Disability Studies] concerns itself with human difference, and emphasizes the ways that people with disabilities are ostracized, medicalized, heroized, and otherwise pushed out of the societally defined space of the ‘normal.’ . . . [Disability Studies] has a long history of interest in the ways that language is used to construct formations of power and difference.”).

75 Price, supra note 1, at 110.


77 Price, supra note 1, at 110.

78 ROTHSTEIN & IRZYK, supra note 54, § 4.8, at 398 & nn.68–71.
B. NAMING

To refer to academics with mental impairments, Price writes, “[T]hese days I’m using mental disability. . . . This term can include not only madness, but also cognitive and intellectual dis/abilities of various kinds.”79 While “mental disability” is perhaps accurate for the student with dyslexia, or ADHD, or autism, I disagree with Price’s choice of labels for “mad” academics with a myriad of mood and personality disorders for three reasons. Part of the problem with “disability” is that it presumes an inability to do things that a “normal” person can do. However, this ignores the fact that what an individual can or cannot do often depends on the social context80—the academic environment—and the fact that faculty members with mental impairments are often able to do everything a “normal” faculty member can do, with medication, support, workplace flexibility, and other reasonable accommodations. Labeling me as “disabled” suggests I am incompetent, which I am not. On the contrary, I have been able to exceed expectations in the “essential functions” of my current job.

Second, the word “disability” demands diagnostic and object precision, which Price abhors. As she states, “[p]sychiatric discourse positions itself as natural, scientific, and objective, a system through which human minds may be reliably measured as ‘crazy’ or ‘normal,’ and through which human bodies can therefore be sorted into their appropriate spaces: the educational institution or the mental institution.”81 When a faculty member has received multiple and conflicting diagnoses, and has a myriad of mental health symptoms, how can we define his or her impairment? I would not begin to know how to describe my mental “disability,”

79 Price, supra note 1, at 19.

80 See supra notes 64–68 and accompanying text.

81 Price, supra note 1, at 33.
and medicine and science have not been any more successful. Once we use the term “mental disability,” we devalue the individual experience.

Last, and most important from my perspective, the term “disability” buys into the legal constructs of the ADA. This is problematic for the faculty member who has a mental impairment but does not qualify under the ADA because there is a risk of delegitimizing his or her impairment altogether. The ADA also does not adequately protect academics with mental illness. Faculty members with mental impairments have to work outside of the confines of the ADA, whether through narrative and rhetoric, democratic institutional governance, or legislative or grassroots advocacy, to ensure equal participation in academic life. The term “mental disability” hampers this effort because, to a large extent, “mad” faculty members with “disabilities” have a safe haven under the ADA and are included as equal participants in academic life and those without “disabilities” under the ADA are often excluded. To break free of the ADA as a construct to define who is “able” and who is “disabled,” we need to break free from the term “mental disability.”

I prefer the term “mental illness.” Illness can incorporate a host of diagnoses and symptoms, and does not carry with it the baggage that the mentally ill academic might be incompetent in performing his or her job. Price criticizes this term:

"Mental illness" introduces a discourse of well/unwellness into the notion of madness; its complement is mental health, the term of choice for the medical community as well as insurance companies and social support services. The unwell/well paradigm has many problems, particularly that a mad person needs to be “cured” by some means.\textsuperscript{84}

\begin{footnotesize}
\textsuperscript{82} See supra note 53 and accompanying text.

\textsuperscript{83} For an example of an organization that fosters grassroots advocacy to overcome the stigma of mental illness, see bringchange2mind.org (last visited Aug. 4, 2012).

\textsuperscript{84} Price, supra note 1, at 10.
\end{footnotesize}
While I agree with her critique to some extent, much mental illness is chronic, as are many physical illnesses (e.g., cancers, auto-immune disorders, etc.), and there is no expectation that they will be “cured.” Additionally, the term “mental illness” does not have to be defined naturally, scientifically, or objectively, but, unrestrained by the ADA, can be defined subjectively in light of the “mad” academic’s individual symptoms and experiences. Admittedly, however, there are problems with any term used to describe “madness.” Just as “illness” might suggest temporariness or an impairment that can be cured, “disability” suggests permanence or an impairment that cannot be mitigated or ameliorated.

C. Teaching and Learning

My own experiences with mental illness at Harvard Law School greatly inform my teaching. Price organizes her discussion of teaching and learning within three constructs: presence and absence, participation and discussion, and resistance. I do the same.

1. Presence

A student physically present in class is not necessarily “experiencing” the class.\(^85\) Conversely, a student not physically present in class may “experience” the class: “A student with a social anxiety, or one on the autism spectrum, for example, might get a great deal more out of the learning process that does not involve close contact or interaction with others.”\(^86\) I could learn best in law school by reading text; when not required to do so, I often did not attend class, and did well in the courses that I did not regularly attend. Students’ disabilities may play a role in

\(^{85}\) Id. at 66.

\(^{86}\) Id.
the students’ physical presence in class,87 and therefore, I do not require attendance in my doctrinal classes and provide students many others ways to learn. As an example, I post copies of all of my class notes online.

Of course, students can be absent from class for reasons unrelated to a mental impairment—they might be unmotivated or disinterested (which, of course, could be related to mental illness), have a conflicting commitment (e.g., a job, family, moot court competition, etc.), or be physically ill. Consequently, I take attendance and reach out to any students who consistently miss class, offering any “pastoral” advice or academic assistance I can. In my transactional skills classes, I do require students to attend class and participate; without active attendance and participation by any student (e.g., as a client, co-counsel, or opposing counsel), other students cannot learn. In a law school, students need to learn how to keep professional obligations despite their disabilities,88 and I try to provide “safer” places89 for them to do so (e.g., reaching out to a seemingly “anxious” student in a negotiation for one-to-one “coaching,” or encouraging students to take a break on their own to gather their thoughts). Ironically, students in these classes often talk to my co-teachers and me about issues related to their mental health, partly because of the intense interactions and critical self-reflection that we require.

87 See id. at 65.

88 Many commentators have talked about the importance of teaching law students professionalism. See, e.g., Douglas S. Lang, The Role of Law Professors: A Critical Force in Shaping Integrity and Professionalism, 42 S. TEX. L. REV. 509, 512 (2001) (“Although law professors could easily set law students on the track towards honest, ethical and professional behavior in the practice of law, many professors refuse to act.”).

89 Price, supra note 1, at 100–01 (discussing “safe houses”).
2. Participation

I do not use the Socratic method or cold-call on students; every time I think about doing so, I am brought back to my experience in Professor Areeda’s antitrust class. The Socratic method can alienate or silence students who identify with “outsider” groups.90 I give students

90 See, e.g., Jennifer Jolly-Ryan, Disabilities to Exceptional Abilities, Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner, 6 NEVADA L.J. 116, 124–25 (2005) (“Scholars now criticize the Socratic Method as a primary teaching tool, despite its long reign in law schools. It is ineffective for most types of learners. Some scholars describe it as ‘mystifying and patriarchal, persisting because of large classes and professors too lazy to adopt new teaching methods.’ It has been particularly ineffective for teaching women, minorities, and students with a wide variety of learning styles. However, law professors cling to the Socratic Method as their primary teaching tool.” (footnotes omitted)); Benjamin V. Madison, III, The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students, 85 U. DET. MERCY L. REV. 293, 301 (2008) (“Does the unwillingness to embrace methods to complement the Socratic method actually represent an unhealthy elitism? Evidence suggests that the large-class Socratic format discourages participation of many students, particularly women and minorities. If women and minorities do not benefit from the pure-Socratic approach, we ought to ask ourselves whether professors are ironically perpetuating a subtle form of discrimination by their insistence upon a purely Socratic classroom.” (footnote omitted)); Jennifer L. Rosato, The Socratic Method and Women Law Students: Humanize, Don’t Feminize, 7 S. CAL. REV. L. & WOMEN’S STUD. 37, 37–38 (1997) (“Complaints have been leveled against the Socratic Method of law teaching for many years. Notwithstanding these complaints, the Socratic Method continues to be the primary pedagogy
many opportunities to participate through “multimodal communication”\(^9^1\) — in class, they work individually, in pairs, and in groups; can work on written assignments by themselves or with classmates; receive information in writing, verbally, and visually; and can communicate with me by e-mail or in person.\(^9^2\) I also ask a group of students to work together to prepare each set of used by law school teachers. Renewed concerns about the continued use of this teaching method have been raised by recent studies that address its effect on women law students. The results of these studies are overwhelmingly negative: they conclude that the Socratic Method alienates, oppresses, traumatizes and silences women.” (footnotes omitted)).

\(^9^1\) See Price, supra note 1, at 96–98 (discussing “multimodal communication”).

\(^9^2\) Students should be exposed to varying types of communication both because they have diverse learning styles and because they will be required to communicate in different ways as lawyers. See, e.g., Aïda M. Alaka, Learning Styles: What Difference Do the Differences Make?, 5 CHARLESTON L. REV. 133, 167–68 (2011) (“Similarly, regardless of whether one self-identifies as a visual, auditory, kinesthetic, or tactile learner, lawyers regularly use each of those modalities in practice. They process information by reading and synthesizing legal authority and documents obtained during discovery, for example, and act on oral directives from clients, judges, and colleagues. As professional writers, lawyers create myriad types of documents, including those that reflect their analysis of the law, their understanding of clients’ goals, and their informed strategic choices. Although personality might ultimately determine a lawyer’s career choices and, thus, the frequency with which she engages in particular activities, lawyers need to develop the ability to obtain and use information across the spectrum of identified modalities.”); Robin Boyle & Rita Dunn, Teaching Law Students Through Individual Learning Styles, 62 ALB. L. REV. 213, 223 (1998) (“A growing number of law professors agree that students do not all learn
problems and discuss the assigned problems in class. I emphasize ongoing feedback, including positive feedback and encouragement of students, comments on drafts of student work, and opportunities for students to provide me feedback on the class.

the same way. This leads to the conclusion that more emphasis on individual learning styles should be explored at the law school level. Because all students do not learn the same way, law professors should avoid adopting an across-the-board teaching method.

Faculty members should give students prompt feedback, including positive feedback. See Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 106 (2002) (“The importance of formative feedback for student learning cannot be overestimated. Prompt feedback has a clear positive relationship to student achievement and satisfaction. Frequent positive feedback helps students become self-motivated, independent learners.”); Christine Ver Ploeg & Jim Hilbert, *Project-Based Learning and ADR Education: One Model for Teaching ADR Students to Problem Solve for Real*, 11 APPALACHIAN J.L. 157, 182 (2012) (“So little of law school is spent on providing feedback, and this is an important time for the students to feel good about their work. Typically, the clients are extremely happy about the work product, so it can be fun to debrief the students on the clients’ satisfaction. To make the feedback real, faculty could actually go around the room and tell each student individually what particular contributions were valuable, thereby providing both positive feedback and public acknowledgement.”) (footnotes omitted)).

See Price, *supra* note 1, at 96–98 (discussing feedback); see also Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation*, 54 LOY. L. REV. 775, 785 (2008) (“This characteristic has particular significance for Gen X Y students, who learn best when they are actively engaged with the material. A key part
3. Resistance

My classroom is unorthodox: I stand on desks, yell, make self-depreciating jokes, tell stories, and even have been known to take a student’s water bottle and dump it out on the floor (to illustrate the tort of conversion). Consequently, the norms in my classroom are flexible and inclusive, and appeal to students with a variety of learning styles and backgrounds. I view student “resistance” flexibly, and “seek to include disruption of [my] own classroom-based agendas as part of the learning process.” For example, I taught an intensive one-week simulation class, and students were near mutiny after staying up all night to complete research memos. I used this experience both to encourage students to reflect critically on what they learned and for me to reflect on how I could give feedback to boost the students’ enthusiasm and reduce the workload for the remainder of the week. I welcome students to “interrupt the conventional script of classroom discourse,” as long as they do so civilly and professionally. I often interrupt that “conventional script” myself, by, for example, leading a mindfulness or relaxation exercise in the middle of class.

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of active engagement, and of participation in the classroom, is the give and take of feedback between professor and student. Feedback—like frequent opportunities for evaluation—confirms to students that they have grasped the concepts involved. With this confirmation, they can progress through the learning process in the small steps their life experiences have taught them to expect. Since their technology-laced experience has conditioned them to receive information in small, discrete portions, rather than engaging in a lengthy process of learning with results deferred, frequent evaluation can enhance the learning process directly.” (footnotes omitted)).

95 Price, supra note 1, at 79–80.

96 Id. at 79.
D. PRODUCTIVITY

As Price notes, we “continue to think of the prototypical faculty member as a three-trick pony, equally skilled in research, teaching, and service.”97 In response to this traditional conception of “productivity,” Price asks two pertinent questions:

The first question is: What is the nature of the thing? In other words, what in fact are the essential functions of work as a faculty member? The second question is: What is the quality of the thing? In other words, how good is the faculty member’s performance in teaching, scholarship, service (and perhaps collegiality)?98

Critics of legal education have argued that law schools should redistribute resources away from scholarship and toward student learning and development.99 Law schools are beginning to

97 Id. at 136.
98 Id. at 107.
99 See Lauren Carasik, Renaissance or Retrenchment: Legal Education at a Crossroads, 44 IND. L. REV. 735, 767 (2011) (“One argument to justify a reduction in full-time faculty members is based on criticisms of the utility of increasingly esoteric faculty scholarship that is produced on the backs of law students, with no real attendant benefit to the students. According to this argument, the money spent supporting law professors to produce scholarship could be better spent providing direct benefits to the students who finance those salaries.”); Mary A. Lynch, An Evaluation of Ten Concerns About Using Outcomes in Legal Education, 38 WM. MITCHELL L. REV. 976, 985 (2012) (“Some legal education reformers maintain that resources in legal education have been disproportionately weighted towards scholarship goals and away from professional development of students. They argue for what they see as a ‘fairer’ distribution of resources.”) (footnote omitted)); Brent E. Newton, Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Professional
rethink the role of faculty, and some proponents of reform argue that law school faculty should focus either on teaching or scholarship. As Price argues, “[a] key structural shift that

Competencies Obstruct Reform in the Legal Academy, 62 S.C. L. Rev. 105, 154–55 (2010) (“A significant amount of the tuition that law students pay currently serves as a cross-subsidy that allows professors to spend most of their time researching and writing impractical law review articles rather than effectively teaching students the knowledge, skills, and professional values they will need to be competent (and employable) lawyers. This state of affairs is unacceptable. A healthy balance must be reached between law schools’ dual roles as learning institutions and producers of legal scholarship. The latter’s current dominance, which has spawned a generation of mostly impractical law faculties, must cease before the pedagogical and curricular reforms such as those proposed in the Carnegie Report can be realized. The professoriate must practice before it preaches.” (footnotes omitted)).

100 See John O. Sonsteng et al., Legal Education Renaissance: A Practical Approach for the Twenty-First Century, 34 WM. MITCHELL L. REV. 303, 467 (2007) (“Education institutions must determine the appropriate role of faculty, while taking into account the impact of cost on individual students, the established educational objectives, the necessary balance between the faculty’s role in education and scholarship, and the extent to which a particular faculty structure requires students to find crucial training outside the law school.”) (footnote omitted)).

101 See, e.g., Newton, supra note 99, at 148–49 (First, law schools should create two types of tenure-track professorships, ‘research’ professors and ‘teaching’ professors,’ with equal opportunities in the tenure-track system (although evaluated differently for tenure), equitable voting rights in faculty governance, and equivalent salaries. Unlike the current system, which routinely assigns the bulk of teaching responsibilities to faculty members who have been hired to
would benefit not only faculty with mental disabilities, but all faculty . . . would be a radical reconfiguration of the research-teaching-service triad, with a proliferation of differently structured positions according to [institutional] need, ability, and desire.”

If we were to rethink the role of faculty, we could reexamine the role of the faculty member’s “presence” in the classroom. Law schools are beginning to shift more resources to online teaching and learning to increase access to legal education. To the extent online teaching and learning further pedagogical objectives, such as appealing to different learning

be impractical scholars, the proposed system would permit a certain segment of the faculty, at most one-third, to focus on what they do best: theoretical, interdisciplinary research and scholarship. Such research professors, only a small percentage with both a Ph.D. and a law degree, would carry lesser teaching loads than teaching professors, and in addition would only teach courses in their areas of expertise (e.g., statistics and econometrics for lawyers).” (footnotes omitted)).

102 Price, supra note 1, at 137.

103 Id. at 112 (“Here we see the problem of presence, explored in terms of students’ experience in chapter 2, affecting faculty members as well.”).

104 See, e.g., Gregory M. Duhl, Equipping Our Lawyers: Mitchell’s Outcomes-Based Approach to Legal Education, 38 WM. MITCHELL L. REV. 906, 943 (2012) (“Online and blended courses increase access for students, especially nontraditional students . . . . We need more courses that are fully online, especially bar courses, which enable students to complete externships in rural parts of Minnesota.”).
styles\textsuperscript{105} and achieving certain learning outcomes,\textsuperscript{106} faculty members, such as professors who suffer from panic disorder, could be “present” in the classroom without making a “fleshy appearance.”\textsuperscript{107} Likewise, the faculty member who, like me, feels awkward and uncomfortable at

\textsuperscript{105} See David P. Diaz & Ryan B. Cartnal, \textit{Comparing Student Learning Styles in an Online Distance Learning Class and an Equivalent On-Campus Class}, 47 C. TEACHING 130, 130 (1999).

\textsuperscript{106} See U.S. DEP’T OF EDUC., EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES 18 (2010), available at http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf (“The overall finding of the meta-analysis is that classes with online learning (whether taught completely online or blended) on average produce stronger student learning outcomes than do classes with solely face-to-face instruction.”); Gary A. Munneke, \textit{Managing a Law Practice: What You Need to Learn in Law School}, 30 PACE L. REV. 1207, 1245 (2010) (“Just as legal services are no longer bound by the four walls of the law office, education without walls is not only feasible, but desirable. Without denigrating the value of face-to-face contact, distance learning, like distance representation of clients, provides opportunities to enhance and expand the scope of communications.”).

\textsuperscript{107} Price, \textit{supra} note 1, at 112.
conferences, could discuss his or her work through blogs, e-mails, and peer exchange or feedback.

There remains one caveat. While the experiences and perspectives of “mad” faculty can provide the answers to Price’s questions, particularly because they can relate to students with different learning styles and dis/abilities, we should define the “essential functions” of a professor in the context of institutional needs. Price starts with the premise that some “mad” faculty members cannot fulfill the “essential functions” of a professor as traditionally defined, and then argues that all faculty could benefit from a reconceptualization of faculty “productivity.” Her rhetorical move undercuts the “outsider” narrative; we have more credibility to advocate for institutional change if we are “competent” as measured by current institutional norms.

The converse of Price’s concern as to whether mentally ill faculty members can fulfill the “essential functions” of their jobs is the risk that they be held to a higher “productivity” standard than “normal” faculty. For example, the Faculty Handbook at my law school states:

To be granted and retain tenure, faculty members at William Mitchell are expected to demonstrate competent and professional performance in four areas:

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108 Cf. Price, supra note 1, at 121–29 (discussing “productivity” and “collegiality” in the context of academic conference.

109 See id. at 131 (“I’m delighted to give and receive directly voice feedback when I can; however, being queer and mentally disabled myself, I can well understand that silence may be the most empowering strategy that one has available at a given time. For this reason—we faculty, administrators, and public advocates, must understand that feedback comes in many forms.

110 See supra note 71 and accompanying text.
(1) teaching; (2) scholarship; (3) service; and (4) complying with the standards of professional conduct. Each of these areas is among the essential functions of the position of a faculty member at William Mitchell. Faculty members must demonstrate overall competent and professional performance.111

Despite this language, some of our faculty members do not engage in scholarship, for example.

As a mentally ill faculty member, I could be held to a higher standard than “normal” faculty members because I must show I can fulfill the “essential functions” of my job. Two higher education lawyers recommend that institutions “[m]ake sure that workload policies and practices are clear and are followed consistently, documenting any deviations from standard practice (e.g., faculty members given special projects, research leaves, etc.).”112

E. COLLEGIALITY

While writing this article, I happened to read this advice for faculty candidates giving job talks from Dan Shapiro, Chair of the Humanities Department at the Penn State College of Medicine:

Fragile faculty members are a drain on our system, and more important, on me. If they need a certain temperature in their office (within two degrees), can’t function if their mailbox gets moved, and panic if the class times change, then life will be hard on all of us. I need faculty members who can help nourish our fragile students even in tough circumstances, not suck away all the resources because they themselves can’t tolerate life’s normal insults.113


113 Dan Shapiro, Grim Job Talks Are a Buzz Kill, CHRONICLE OF HIGHER EDUC. (June 18, 2012), http://chronicle.com/article/Grim-Job-Talks-Are-a-
My reaction was total disbelief; Shapiro’s rhetoric—and perhaps his actions—exclude the “fragile” and the hypersensitive and many of the mentally ill from positions in his department. I regularly ask the facilities department to turn down the temperature in my office and in my classrooms because I sweat from general anxiety; I often get flustered by a room change or a schedule change; and life’s “normal insults,” for example, one negative comment on a course evaluation, bother me. In excluding me and others like me, Professor Shapiro excludes our energy, our creativity, our voices, and perhaps our abilities to relate to the “fragile” students that he describes.

Price recounts the common narrative of how mentally ill faculty members “are labeled as ‘difficult’ and become the object of administrative hand-wringing, or even formal sanctions. In this case, we might think of Professor Y, who is notorious for her outbursts in faculty meetings and who is whispered to be ‘unbalanced.’”\textsuperscript{114} The speaker whom my law school invited to our spring faculty retreat to provide sensitivity training on mental illness consults with employers on working with “difficult” people and talked about how to “manage” and “deal with” mentally ill academics. There is also an assumption in much writing that mentally ill faculty members are not part of the “collegial” group.\textsuperscript{115} I might be “paranoid,” itself an often-described trait of “uncollegiality,”\textsuperscript{116} but I perceive that I am often viewed as difficult or demanding even, ironically, in my request for accommodations.\textsuperscript{117}

\textsuperscript{114} Price, supra note 1, at 4.
\textsuperscript{115} Id. at 115.
\textsuperscript{116} Id. at 114.
The American Association of University Professors warns against using “collegiality” as an independent criterion for faculty evaluation:

[C]ollegiality is not a distinct capacity to be assessed independently of the traditional triumvirate of teaching, scholarship, and service. It is rather a quality whose value is expressed in the successful execution of these three functions. . . . The current tendency to isolate collegiality as a distinct dimension of evaluation, however, poses several dangers. Historically, “collegiality” has not infrequently been associated with ensuring homogeneity, and hence with practices that exclude persons on the basis of their difference from a perceived norm. The invocation of “collegiality” may also threaten academic freedom. . . . [C]ollegiality may be confused with the expectation that a faculty member display “enthusiasm” or “dedication,” evince “a constructive attitude” that will “foster harmony,” or display an excessive deference to administrative or faculty decisions where these may require reasoned discussion. Such expectations are flatly contrary to elementary principles of academic freedom, which protect a faculty member’s right to dissent from the judgments of colleagues and administrators.  

This warning is particularly welcome for a faculty member whose reality is not shaded but defined in black and white. One colleague calls me an “enigma” because he cannot figure out whether I will support the administration or not from issue to issue. His reaction is not surprising. I support not what the administration wants or does not want, but what I think is “right.” Yet, at the same time, I am “highly committed to [my] organization, driven to succeed, and loyal.”

117 Cf. Price, supra note 1, at 118 (“There is little current research on how well mental disabilities are accommodated outside of the ADA suits; however, what research does exist seems to indicate that employees fear asking for accommodations, and when they do ask, report being further stigmatized. . . . This creates . . . a ‘disclosure conundrum’: to obtain accommodation, a person with a mental disability must disclose; but the act of disclosure itself may bring about stigmatization and retaliation.”).


119 Paetzold, supra note 62, at 373.
Neither Price nor I suggest that faculty conduct that does not conform to institutional norms should be condoned; we ask instead for a “clearer” and more “ethical” conceptualization of what those norms are.120 Mental illness should not excuse conduct harmful to the institution, and I receive mental health treatment for both personal and professional reasons to enable me to excel at work. At the same time, colleagues can be “affirming” toward faculty members with “hidden disabilities,” in standing by such a colleague under scrutiny, or taking collective action on behalf of that faculty member (e.g., by writing a collaborative memo to the administration).121 “[A] small gesture or a few well-placed words can have enormous impact.”122 We must proliferate our ways of asking for—and listening for—feedback,”123 which suggests that feedback should be more democratic and go in many directions (e.g., from faculty-to-faculty, administrator-to-faculty, and faculty-to-administrator). Yearly, my academic deans and tenure committee evaluate me, but I am never given the opportunity to evaluate them. More pointedly, “[t]he shameful statistics on employment levels of persons with mental disabilities, the silence around mental disability in academe, and our scarcity in faculty positions generally, are also feedback, if we listen to them.”124

120 Price, supra note 1, at 116.
121 Id. at 132.
122 Id. at 134.
123 Id. at 130.
124 Id. at 131.
As Price writes, there is “no one size fits all” for access.\textsuperscript{125} For example, my communication style differs from the “normal-minded”: I am direct, honest, and literal and often miss social cues and nuances. I am an incredibly fast thinker and worker, which is refreshing to some colleagues and off-putting to others. The solution is a structural one—we need “more democratic systems of communication that make room for difference.”\textsuperscript{126} For example, I am much more comfortable communicating by e-mail than in person.\textsuperscript{127} As Ramona Paetzold writes, “[o]pening the doors for those with mental illnesses means that innovation is required to find ways to alter the work environment to embrace them and render them enabled.”\textsuperscript{128}

IV. MAD AT SCHOOL: WHAT MATTERS?

In \textit{Mad at School}, Price, with humility and compassion, analyzes the rhetoric in academic discourse about mental disabilities. Her analysis is critical to making much-needed progress in higher education toward removing stigma and obstacles for academics with mental illness. In addition, law, medicine, and “outsider” narratives, all of which Price discusses, offer insights into how we can remove the secrecy and stigma surrounding mental illness in legal education.

A. RHETORIC AND CONTEXT MATTER

\textsuperscript{125} \textit{Id.} at 134.

\textsuperscript{126} \textit{Id.} at 116.

\textsuperscript{127} \textit{Cf. id.} at 90 (“For my own frenetic, visual/verbal ways of learning—not to mention my anxiety during face-to-face interactions—holding two or three conversations via chat is considerably more effective and more energy-efficient than holding one oral/aural conference in person.”).

\textsuperscript{128} Paetzold, \textit{supra} note 62, at 371.
After listening to a social worker talk at our faculty retreat about how to work with “difficult” (i.e., mentally ill) people, I could not stand it anymore. I spoke out about how I had been diagnosed with both Bipolar Disorder and BPD. I argued that mentally ill academics frequently have tremendous creativity, energy, and drive, and can make enormous contributions to educational institutions, often because of their illnesses. Taken off guard, she responded that she was focusing on acute disorders, such as anxiety and depression, and not personality disorders. She did not even acknowledge that the symptoms of personality disorders are often acute (e.g., panic, depression, mania, etc.). That was my “coming out” to my faculty colleagues, to which most responded, “I never would have known.”

The social worker’s rhetoric did more to stigmatize mental illness than to eliminate stigma, in large part because of the context in which she spoke—she was the alleged expert on mental illness in the workplace. After the presentation, one of my curmudgeonly colleagues came up to me and said, “Greg, I did not know you were a nutcase.” In most contexts, such a comment would be insulting and dehumanizing, but this colleague made his comment as a sign of support and affection. Context matters.

While writing this article, Jesse Jackson Jr. was missing from Congress. After much speculation, his staff released a statement from an unidentified doctor that Jackson was “receiving intensive medical treatment at a residential treatment facility for a mood disorder” and “is responding positively to treatment and is expected to make a full recovery.”\(^{129}\) His office first

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announced that he was taking a medical leave of absence for “exhaustion.”130 Using “exhaustion” as a misnomer for mental illness is stigmatizing—when administrators and colleagues tell me they worry about me “burning out” or becoming “exhausted,” they are, although well-intentioned, minimizing that my illness is part of my “mind.” Likewise, the remark that Jackson is “expected to make a full recovery” suggests that mental illness can be “cured,” a suggestion that both Price and I would agree is rhetorically crippling.

B. LAW MATTERS

The ADA has largely failed academics with mental illness.131 These academics cannot prove that they have a “disability,” that they are “otherwise qualified” to perform the “essential functions” of the job, or that their accommodations are “reasonable.”132 While some commentators have called for courts to interpret the ADA more broadly,133 the problem is with the ADA itself. As Kathleen Zylan notes,

Perhaps in an effort to combat fears of over inclusiveness by covering the mentally ill under the ADA, Congress drafted an ambiguous statute that has undoubtedly led to economic waste in the form of increased litigation and employment costs as employers and courts wade through the nebulous language. These ambiguities are particularly troublesome when claims are based on mental disability rather than physical disability because the nature of mental illness lends itself to more speculation and less confidence in the veracity of the claim of


131 See supra note 53 and accompanying text.

132 See supra notes 53–72 and accompanying text.

133 See, e.g., Paetzold, supra note 62, at 363–82.
disability. This lack of precision in diagnosis of a mental disorder, coupled with the ambiguities in the language of the ADA, also provides difficulties for employers when making employment decisions. Thus, the ADA fails not only the employees, but also the employers.\footnote{See Zylan, supra note 53, at 80–81 (footnotes omitted).}

We need to advocate for laws and regulations that do not clutch to a definition of “disability” more suited for those with physical impairments but that cover mental illness more broadly and explicitly, including specific illnesses and symptoms. Likewise, we need to think of “accommodations” more broadly. For example, the Job Accommodation Network suggests that supervisors can do the following for employees with mental health impairments:

- Provide positive praise and reinforcement;
- Provide day-to-day guidance and feedback;
- Provide written job instructions via email;
- Develop clear expectations of responsibilities and the consequences of not meeting performance standards;
- Schedule consistent meetings with employee to set goals and review progress;
- Allow for open communication;
- Establish written long-term and short-term goals;
- Develop strategies to deal with conflict;
- Develop a procedure to evaluate the effectiveness of the accommodation;
- Educate all employees on their right to accommodations;
- Provide sensitivity training to coworkers and supervisors;
- Do not mandate that employees attend work-related social functions; and
- Encourage all employees to move non-work-related conversations out of work areas.\footnote{Beth Loy, Accommodation and Compliance Series: Employees with Mental Health Impairments, JAN (Dec. 31, 2012), https://askjan.org/media/Psychiatric.html.}

“Mad” faculty members should also encourage their academic institutions to adopt policies for faculty members with mental and physical impairments. I was surprised that many institutions, such as my own, do not have one. Two leading higher education lawyers wrote in advising educational institutions, “[i]f your institution has a policy for dealing with faculty or staff disabilities, consult that first. If your institution has no such policy, it should develop one
immediately.” Similarly, the American Association of University Professors writes, “[m]ost institutions have well-developed procedures for managing the needs of students who have disabilities. Procedures for managing faculty accommodation requests, while used less frequently, are equally important.”

In this area, the “outsider” narrative is particularly important because academic institutions can provide greater clarity and certainty than the ADA and better support and protection for impaired faculty members. While this can benefit “mad” faculty members, it can benefit educational institutions as well. As Ramona Paetzold writes,

Ironically, employers can benefit from employees with [Bipolar Disorder] during those hypomanic periods when they tend to be goal-directed, more creative, and requiring little sleep, particularly if facilitated by surrounding conditions. It would simply be unfair (and societally unwise) to eliminate such employees if they then exhibit temporary behavioral or performance limitations. . . . [O]pening the doors for those with mental illnesses means that innovation is required to find ways to alter the work environment to embrace them and render them enabled.

Paetzold explicitly makes room for the narrative of faculty who contribute to academic institutions because of their mental impairments.

C. MEDICAL TREATMENT MATTERS

I was preparing for a consultation with one of the country’s leading psychiatrists on pharmacological treatments for BPD. I read his latest research, which suggested that carbamazepine—which I took at the time—was ineffective for treating BPD and that Topomax

136 LEE & RUGER, supra note 112, at 16.


138 Paetzold, supra note 62, at 371.
had been proven effective. I met with him, and after talking to me for an hour, he advised me that
the Topomax trials were not relevant to me, and I should stay on carbamazepine. I started seeing
a new psychiatrist two months later, and she took me off of the carbamazepine and put me on
Lamictal, yet a third mood stabilizer.

Despite the pronouncement that the “revisions of [the] DSM have represented an
increasing model of disability as a measurable and biological phenomenon,”139 the diagnosis and
treatment of mental illness is subjective and imprecise. As my experience above shows,
psychotropic medications are not “magical bullets” that can erase or cure mental illness140—
psychiatrists cannot even agree on the most effective medication for treating any particular
illness or symptom. Likewise, non-medicinal treatment recommendations for BPD range from
Dialectical Behavior Therapy “DBT”)141 to Schema Focused Therapy142 to Mentalization Based
Therapy143 to Transference Focused Psychotherapy.144

139 Price, supra note 1, at 34.
140 Id. at 110, 111 (“Suggesting that a person’s mental disability effectively disappears with the
application of medication is as absurd as suggesting that his hearing disability disappeared
because he used hearing aids . . .”).
141 Kristalyn Salters-Pedneault, Borderline Personality Disorder Treatment, Health, ABOUT.COM
(Apr. 29, 2011), http://bpd.about.com/od/treatments/a/BPDtreat.htm (“DBT for BPD focuses on
teaching skills to tolerate distress, stabilize emotions, and maintain healthier relationships.”).
142 Id. (“Schema focused therapy for BPD focuses on confronting maladaptive beliefs that are
developed as a result of early life events.”).
143 Id. (“Mentalization based therapy for BPD focuses on helping the client to recognize mental
states, such as thoughts, feelings, and wishes, in themselves and in others.”).
However, we should not jump to the conclusion that medicine and science are arbitrary or do not matter to individuals with mental illness. Different medications and treatments have good outcomes for individuals with BPD; the frustration is that no medication or treatment works for everyone. Price talks about “a [psychiatric] profession that is less coercive and more

144 Id. (“Transference focused psychotherapy uses elements of the relationship between the client and the therapist to help reduce BPD symptoms.”).

145 Id.; see, e.g., DBT Resources: What Is DBT?, BEHAVIORALTECH.ORG, http://behavioraltech.org/resources/whatisdbt.cfm/ (last visited July 19, 2012) (“Two randomized controlled trials (RCTs) of DBT, supported by grants from the National Institute of Mental Health and the National Institute of Drug Abuse, have indicated that DBT is more effective than Treatment-As-Usual (TAU) in treatment of BPD and treatment of BPD and co-morbid diagnosis of substance abuse. Clients receiving DBT, compared to TAU, were significantly less likely to drop out of therapy, were significantly less likely to engage in parasuicide, reported significantly fewer parasuicidal behaviors and, when engaging in parasuicidal behaviors, had less medically severe behaviors. Further, clients receiving DBT were less likely to be hospitalized, had fewer days in hospital, and had higher scores on global and social adjustment.” (internal citations omitted)).

146 Drew Western & Rebekah Bradley, Empirically Supported Complexity, Rethinking Evidence-Based Practice in Psychotherapy, 15 CURRENT DIRECTIONS IN PSYCHOL. SCI. 146, 147 (2006) (“The empirically supported therapies movement is predicated on the assumption that most patients either have, or can be treated as if they have, one primary syndrome, for which a single treatment package can be designed. Without this assumption, researchers would need to test dozens of manuals to address all the possible interactions among disorders for even a handful of
democratic, one that includes not only its practitioners but also its ‘patients’ as important and powerful voices.”¹⁴⁷ “Patients” are their own agents and should be heard by their mental health providers to enable full participation by the mentally ill in their own treatment.

D. NARRATIVE MATTERS

Many law students have had the same experience that I had—they have acute symptoms of mental illness manifesting themselves for the first time in law school.¹⁴⁸ They often must cope with the interaction of common disorders (e.g., the interaction of major depression and panic disorder, of major depression and substance abuse, or of major depression and both panic and substance abuse). This assumption is not inherent in the use of randomized controlled trials; indeed, it is precisely what distinguishes randomized controlled trials in the empirically supported therapies era from randomized controlled trials in the past, which often used mixed patient samples.”).

¹⁴⁷ Price, supra note 1, at 36.

¹⁴⁸ See, e.g., Kirsten A. Dauphinais, Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake, 10 SEATTLE J. FOR SOC. JUST. 49, 112–13 (2011) (“Andrew Benjamin and colleagues conducted a study in 1986, which found that the instances of psychiatric problems spiked significantly for first-year law students and then through law school and for two years after graduation. Many students in law school report loss of self-esteem and alienation as a result of the law school setting. They also report feeling pressure to lay aside their values in law school. Professor Hess reports that these feelings are even more prevalent in female and minority students.”) (footnotes omitted)); Jennifer Jolly-Ryan, The Last Taboo: Breaking Law Students with Mental Illness and Disabilities Out of the Stigma Straitjacket, 79 UMKC L. REV. 123, 144 (2010) (“Many law students begin their legal education with little or no signs of mental impairment such as depression or anxiety. But
with their illnesses in secrecy and isolation; there are no student organizations for the mentally ill as there are for other “outsider” groups, and the student who “comes out” faces stigma and employment obstacles.\footnote{149} As Jennifer Jolly-Ryan notes,

due to the nature of a legal education . . . depression and anxiety may develop.”); Robert P. Schuwerk, \textit{The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?}, 45 S. TEX. L. REV. 753, 764–66 (2004) (“Most law professors are not familiar with the ever-increasing literature documenting the extreme levels of mental illness and substance abuse that develop among law students while in law school. . . . Many of those who are familiar with this body of work either do not believe that it is true or else attribute it to [other] causes . . . .”); Kevin H. Smith, \textit{Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach}, 32 AKRON L. REV. 1, 28 (1999) ( “A student who coped well with the stress of undergraduate studies may find herself affected for the first time when faced with the chronic and generally greater stress of law school.”).

\footnote{149} Jolly-Ryan, \textit{supra} note 148, at 129 (“Law students do not want to chance jeopardizing their future careers. Law students with mental illnesses, disorders, or disabilities may fear that disclosure will make them ineligible to sit for the bar exam. ‘There are many disincentives within the legal community for a person to admit that they have a problem. One such disincentive is that if a law student discloses that they are receiving treatment . . . [for a mental disease] they will not be allowed to take the bar exam.’ Therefore, the decision to self-identify as a student with mental or emotional issues and to seek any help from mental health professionals is a difficult one.” (quoting Carol M. Langford, \textit{Depression, Substance Abuse, and Intellectual Property Lawyers}, 53 U. KAN. L. REV. 875, 900 (2005)) (footnotes omitted)).
Ironically, the very people who are in the best position to increase the number of lawyers who intimately understand the discrimination and health care laws in our society impose some of the highest hurdles to employment and educational opportunities. Lawyers stigmatize and often decline to hire other lawyers unless they have a clean mental health history—free of disabilities, disorders, and illnesses.\textsuperscript{150}

Narratives open up opportunities for mentoring\textsuperscript{151} and community\textsuperscript{152} among the mentally ill in legal education and can begin to break down the secrecy, isolation, and stigma of mental illness. Yet, any acknowledgement of mental illness can be “dangerous,”\textsuperscript{153} leading to the same isolation and stigma that “outsider” narratives can combat. Academics who commit to writing narratives about mental illness often back out.\textsuperscript{154} Out of fear, I have stopped writing this essay many times. Narrative has no power in secrecy, however, and like Margaret Price, James Jones, and Ellen Saks, I have decided to share my own.

\textsuperscript{150} Jolly-Ryan, supra note 148, at 123–24.

\textsuperscript{151} Cf. Price, supra note 1, at 138–40 (discussing mentoring).

\textsuperscript{152} See id. at 19–20 (“In my own experience, claiming disability has been a journey of community, power, and love.”).

\textsuperscript{153} Id. at 131.

\textsuperscript{154} Id.